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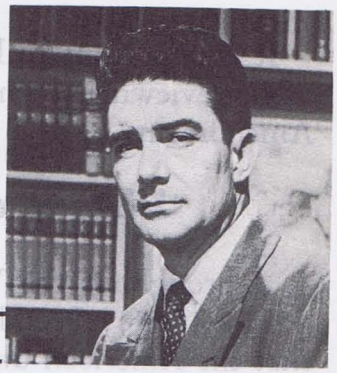

DAN SMOOT

THE FOURTEENTH AMENDMENT

The Fourteenth Amendment[1] to the Constitution of the United States (proclaimed ratified in 1868) was never legally adopted. Yet, this illegal appendage to our organic law is the basis for contemporary court decisions and governmental practices which are shattering the foundations of our free society.

Congress should resubmit the Fourteenth Amendment for legal ratification, or rejection. I do not think we can restore the American constitutional Republic until the people compel their Congress to take such action. Hence, in this *Report,* I offer a brief review of the incredible history of the Fourteenth Amendment, with examples of dangerous doctrines and practices which have resulted.

But first, one needs to understand the *legal* methods of amending the Constitution. These methods are clearly specified in Article V of our original Constitution, as adopted in 1789.[2] The President and the federal courts have no role in the amendment process. Congress has only a ministerial role. Congress *may* propose an Amendment on its own initiative (two-thirds of both houses desiring). Congress *must* call a convention for proposing Amendments if two-thirds of all states demand such action. And Congress may select one of two constitutionally prescribed methods by which the people in the individual states can act on a proposed constitutional Amendment: Congress can require that the people act through their state legislatures; or Congress can require that the people act through constitutional conventions. *But Congress has no other authority in the Amendment process.*

The power to amend the Constitution resides, exclusively, in *the people of states in the union* — who have an absolute right to reject, or accept, a proposed amendment, without any kind of coercion from any branch or agency of the federal government.

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It is important to keep these facts in mind while reviewing the history of the Fourteenth Amendment.

History of the 14th

Throughout the War Between the States (1861-1865), President Lincoln maintained that the American union was indivisible; that the war was being fought, *not* to abolish slavery, but to suppress rebellion which threatened to dismember the union; and that, once the rebellion was suppressed, the union of all states would exist exactly as before the hostilities.

On December 8, 1863, Lincoln formally emphasized this doctrine by issuing a proclamation, promising amnesty (forgiveness) to people in the confederate states who would swear an oath of allegiance to the Constitution and to the union, and promise to obey laws and proclamations abolishing slavery. At that time, Charles Sumner of Massachusetts (radical leader in the Senate) and Thaddeus Stevens of Pennsylvania (radical leader in the House) wanted Lincoln to consider the southern states as territories or alien lands outside the union, so that they could be treated as conquered provinces if the north won the war.[3]

Lincoln carefully refused to do this. Inasmuch as the north won the war, Lincoln's point was proven: the southern states never did secede from the union: they merely tried to.

The day hostilities ended, therefore, the southern states were constitutionally entitled to their full representations and rights in the national Congress. The federal government could not legally lay down conditions for "readmitting" the southern states, because, according to the doctrine of Lincoln and the decision of war, they had never left the union.

On January 31, 1865, Congress submitted, for approval of the states, a resolution proposing the 13th Amendment to abolish slavery. The proposal was submitted to four confederate states which already had post-war governments recognized by Lincoln: Arkansas, Virginia, Tennessee, and Louisiana.

On March 4, 1865, Congress adjourned without having recognized the Lincoln-approved government of Louisiana.

On April 9, 1865, General Robert E. Lee surrendered at Appomattox. President Lincoln expressed gratitude that the "rebellion" had come to an end at a time when Congress was not in session to cause trouble, and said:

"If we are wise and discreet, we shall reanimate the states and get their governments in successful operation with order prevailing and the Union reestablished before Congress comes together in December."[3]

On April 14, 1865, Lincoln was assassinated; but, on May 29, his successor — Andrew Johnson — issued a proclamation of amnesty patterned on Lincoln's proclamation of December, 1863. On the same day, Johnson also issued a proclamation to carry out Lincoln's plan of reconstruction. Johnson's proclamation set up a provisional government for North Carolina, appointing a governor to call a convention chosen by the people of the state for the purpose of establishing a permanent state government. The persons qualified to vote for delegates to this convention were those who had been qualified to vote prior to the Civil War — and who had taken the required oath of amnesty.[3]

By July 13, 1865, President Johnson had applied this "Lincoln formula" for reconstruction to all remaining states in the confederacy. Before Congress convened in December, 1865, all confederate states (except Texas, which delayed until the spring of 1866) had thus established legitimate governments. And, *as states,* all (except Mississippi and Texas) had ratified the 13th Amendment, abolishing slavery.[4]

When Congress convened in December, 1865, the radicals in control refused, however, to seat Representatives and Senators from the confederate states.

Thus, the Congress which convened in

December, 1865, was an illegal Congress, because it denied representation from states constitutionally entitled to representation.

On April 9, 1866, the illegal Congress enacted the Civil Rights Bill (over President Johnson's veto). To place this measure beyond the danger of overthrow by the courts, or by a subsequent, legal Congress, the radical Congress incorporated the essential provisions of the Civil Rights Bill in a Resolution proposing the Fourteenth Amendment.[5]

The Resolution proposing the Fourteenth Amendment passed the Senate on June 8, 1866, by a vote of 33 to 11, with 5 Senators not voting. On June 13, 1866, the House took a final vote on the Resolution: 120 representatives for the proposal, 32 opposed, and 32 not voting.

This vote in the House did not meet the constitutional requirement that a Resolution proposing a constitutional amendment must be approved by two-thirds of both Houses. There were 184 Representatives in the illegal Congress on June 13, 1866.[6] Two-thirds of that number would have been 123. Only 120 voted for the Resolution proposing the Fourteenth Amendment.

Nonetheless, the leadership of Congress arbitrarily declared the Resolution enacted. Congress submitted the Fourteenth Amendment proposal to all states for ratification — including the confederate states which had been denied representation.

Tennessee was the only confederate state which voluntarily ratified the Fourteenth Amendment. The other ten confederate states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia) rejected it. Four states outside the old confederacy also rejected the Amendment: California, Delaware, Kentucky, and Maryland. Iowa did not ratify the Fourteenth Amendment until April 3, 1868; and Massachusetts did not ratify until March 20, 1867.

Thus, by the first of March, 1867, only 21 of the then 37 states said to be in the union had ratified the proposed Fourteenth Amendment.[7] At least 28 states had to ratify, to meet the constitutional requirement that amendments must be approved by three-fourths of all states.

So, on March 2, 1867, Congress passed the Reconstruction Act, abolishing the governments in the ten confederate states which had rejected the Fourteenth Amendment. The Act placed these ten states under military dictatorship, requiring the commanding generals to prepare the rolls of voters for conventions to formulate governments acceptable to Congress.

Everyone who had served in the confederate armed forces was denied the right to vote or hold office — despite the presidential proclamation of amnesty. Virtually the only persons permitted to vote or to hold office were negroes, southern scalawags, and carpetbaggers from the north and from foreign countries.[3,4,6] The Reconstruction Act provided that when the legislatures of these "reconstruction" governments ratified the Fourteenth Amendment, the states would be admitted to the union — although the Constitution clearly provides that only states already in the union can act on Amendments, and gives Congress no authority to coerce action on Amendments.[2]

Congress denied the southern states any judicial relief, by intimidating the Supreme Court into silence — threatening to abolish the Court's appellate jurisdiction, or to abolish the Court itself, by constitutional amendment.

When Mississippi attempted to secure a court injunction to prevent the President from enforcing the unconstitutional Reconstruction Act (and when Georgia asked for an injunction to keep Army officers from enforcing the Act) the Supreme Court refused to hear the cases. Chief Justice Salmon P. Chase said that even if the Court heard the cases and granted the injunctions, it could not enforce its decrees.[8]

President Johnson called the Reconstruction Act a "bill of attainder against nine million people at once."[8]

During debates in the Senate, over passage of the Act, Senator Doolittle of Wisconsin, condemning the radicals for what they were doing, said:

"The people of the South have rejected the constitutional amendment [the 14th], and therefore we will march upon them and force them to adopt it at the point of the bayonet, and establish military power over them until they do adopt it."[8]

That is precisely what happened: Army bayonets escorted illiterate negroes and white carpetbaggers to the polls, keeping most southern whites away. In Louisiana, an Army general even presided over the state legislature which "ratified" the Fourteenth Amendment.

By July 20, 1868, Iowa and Massachusetts had completed their ratifications of the Fourteenth Amendment, and the legislatures of 6 "reconstructed" confederate states (Alabama, Arkansas, Florida, Louisiana, North Carolina, South Carolina) had ratified. These 8 new ratifications, plus the 21 which had been completed before March, 1867, made a total of 29 state ratifications by July 20, 1868. But legislators of 2 northern states had changed their minds.

Their sense of decency outraged by the whole monstrous procedure, the legislators of New Jersey (on March 24, 1868) and of Ohio (on January 15, 1868) withdrew their former ratifications, and rejected the Fourteenth Amendment.

Hence, there were still not enough ratifications to adopt the Amendment. There had to be 28. There were only 27.

On July 20, 1868, Secretary of State William H. Seward proclaimed that three-fourths of the states *had* ratified the Fourteenth Amendment — *if* the legislatures which ratified in the six confederate states were *authentically organized,* and *if* New Jersey and Ohio were not allowed to reject the Amendment. The radical Congress did not like Secretary Seward's equivocation about legality.

On July 21, 1868, Congress passed a joint resolution declaring the Fourteenth Amendment a valid part of the Constitution and directing Seward to proclaim it as such. On July 28, 1868, Secretary Seward certified, without reservation, that the Amendment was a part of the Constitution.[3,5]

Stretching the Amendment

Freedom of the slave race was, ostensibly, the exclusive purpose of the framers of the Fourteenth Amendment. Yet, as soon as the Amendment was declared adopted, efforts were made to use it as a weapon to destroy states rights. Groups and individuals, who did not like certain local or state laws, brought cases into the federal courts, claiming that the Fourteenth Amendment gave the federal government authority to supervise the activities of state and local governments.

In 1873, the Supreme Court heard the first case testing this doctrine, and held that the Fourteenth Amendment did *not* authorize federal intervention in state and local affairs. The Court said that the real purpose of those who made a claim of such federal authority under the Fourteenth Amendment, "was to centralize in the hands of the federal government powers hitherto exercised by the states."

To foster such intentions, the Court declared, would be

"... to constitute this Court a perpetual censor upon all legislation of the States ... with authority to nullify such as it did not approve....

"The effect of so great a departure from the structure and spirit of our institutions is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers, heretofore universally conceded to them, of the most ordinary and fundamental character.

"We are convinced that no such results were intended by the Congress, nor by the legislatures which ratified this Fourteenth Amendment."[5]

Those who wanted to transform our federal system into a centralized system (by transferring all rights of the states to the central government in Washington) kept badgering the Supreme Court for a decision that the Fourteenth Amendment *did* authorize the federal government to regulate and supervise state laws. The position of the Court on this point began to weaken at the turn of the century; and, by the 1930's, the Court had begun to assume jurisdiction, under the Fourteenth Amendment, to act as "censor upon . . . legislation of the states."[9]

But it was not until after Eisenhower appointed Earl Warren Chief Justice, that the Court began to assume power, under the Fourteenth Amendment, to do *anything* desired by a majority of the nine justices.

In the school segregation decision *(Brown versus Board of Education)* which the Warren Court handed down on May 17, 1954, Chief Justice Warren said the Court had *tried* to determine what the nation's legislators had in mind in 1866-1868 when the Fourteenth Amendment was proposed and declared ratified — but had found the evidence inconclusive.

Warren explained why the Court was on uncertain ground in using the Fourteenth Amendment as authority for a decision concerning public schools. He said:

"An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. . . .

"Even in the North, the conditions of public education did not approximate those existing today. . . . compulsory school attendance was virtually unknown.

"As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education."[10]

In other words, the Fourteenth Amendment did not have, and was not intended to have, anything whatever to do with the question of public schools.

This means — if we have constitutional government — that neither the Supreme Court nor any other agency of the federal government has a legal right to do anything about public schools. The meaning of constitutional government is that the government must be bound by the contract — the Constitution — which created the government. If Supreme Court justices (or any other public officials), who are sworn to uphold the Constitution, can change it at will by adding to its meaning, or by reinterpretation, then we have no Constitution at all.

It does not matter that the officials may have a good purpose in mind. It does not matter, even if an overwhelming majority of the people may approve of what the officials are trying to accomplish by changing the Constitution. The Constitution is meaningless if the agents who are hired to implement it and who are solemnly bound to uphold, and stay within the limits of, all its provisions, can change it to suit themselves.

If the people want the agents of government to do something which the contract of government does not authorize, then the *people* should change the contract (amend the Constitution by due process) in order to give officialdom the additional power and responsibility which the people want it to have.

To let officialdom change the contract, is to open the floodgates to unrestrained, unconstitutional, tyrannical government.

The Warren Court refused, however, to be bound by the Constitution. Chief Justice Warren said:

"In approaching this problem, we cannot turn the clock back to 1868 [when the Fourteenth Amendment was proclaimed ratified]. . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation."

Warren concluded that segregation of white and colored children in public schools has a

detrimental effect upon the colored children, saying the conclusion "is amply supported by modern authority."[10]

In a footnote, Warren cited the modern authorities whom he was relying on. He did not cite any authorities on the Constitution, or legal experts, or court decisions, or judicial precedents. He cited books written by racial agitators: (1) K. B. Clark, a negro who was hired by the National Association for the Advancement of Colored People and whose evidence in the segregation cases was subsequently proven false; (2) Theodore Brameld, whose record in the House Committee on Un-American Activities shows membership in at least 10 communist organizations; (3) E. Franklin Frazier, who has 18 citations for connection with communist causes; (4) Gunnar Myrdal, a Swedish socialist who has served the communist cause for many years and who (in the very book that Warren cited) has expressed utter contempt for the Constitution of the United States.[11]

To the old, false doctrine that the Fourteenth Amendment authorized the federal courts to interfere with state and local laws, the Supreme Court, in the *Brown versus Board of Education* decision, added the doctrine that the Fourteenth Amendment empowered the Supreme Court to revise the Constitution itself — for any purpose and on any authority which the Court itself may proclaim.

Admitting that the Fourteenth Amendment originally had no effect on the operation of public schools, and citing pro-communist agitators as "authority" for concluding that the Amendment should now be interpreted to have such effect, Chief Justice Warren decided that segregation in public schools violates the "equal protection" clause of the Fourteenth Amendment.

Wrong Breeds Wrong

The Court began immediately to use the *Brown versus Board of Education* decision as a precedent for other similar decisions. Upon the illegal decision of May 17, 1954, the Court has erected an edifice of illegal decisions — an edifice which has become a legal Tower of Babel. The "law of the land" has become whatever a capricious Court claims it to be. We are at the mercy of a judicial oligarchy which, today, can say that the Constitution and the laws mean one thing, but tomorrow can reverse itself and decide that they mean something else.

Recent Court decisions (if permitted to stand) will shatter the foundations of our free society.

Consider, for example, the James Monroe Case. James Monroe, a negro, claimed that Chicago police had violated his rights by searching his home without a warrant. Illinois law provides individuals with adequate opportunity for relief if their rights are so abused. But Monroe did not bring suit against Chicago police in state courts. He brought action directly in federal court.

On February 20, 1961, the Supreme Court, in the Monroe Case, held that the Fourteenth Amendment does give individuals the right thus to by-pass state laws and state courts. It was an 8-to-1 decision. The dissenter was Justice Frankfurter, who said the effect of the Monroe Decision was to convert the United States Constitution into a,

"law to regulate the quotidian [daily] business of every traffic policeman, every registrar of elections, every city inspector or investigator, every clerk in every municipal licensing bureau in this country."[12]

In *Baker versus Carr* (March 26, 1962), the Supreme Court decided, in effect, that the Fourteenth Amendment gives federal courts jurisdiction to supervise the actions of *state legislatures* in the apportionment and districting of *states* for purposes of *state and local* elections. The *Baker versus Carr* decision involved the apportionment and districting laws of the State of Tennessee; but approximately 26 other states were involved in similar suits, or expected to be shortly.[13]

The Constitution makes no grant of power to any branch of the federal government to

interfere in any way with such matters. When the federal government can make decisions governing the composition and representation of *state legislatures,* state governments become branches and tools of the central authority. The American system — a constitutional *federation* of separate states — is destroyed.

On June 25, 1962, the Supreme Court handed down the New York School Prayer Case decision *(Engel versus Vitale),* holding that classroom recitation of an official prayer violated the "establishment clause" of the First Amendment, as "reinforced by provisions of the Fourteenth Amendment."

In effect, the Court used the Fourteenth Amendment to reverse the meaning of the First Amendment. Whereas, the First Amendment prohibits the federal government from *interfering* with the free exercise of religion, the Supreme Court used the First Amendment (as reinforced by the Fourteenth) as authority to *outlaw* the free exercise of religion.[14]

What Can We Do?

The destructive effect of these Supreme Court decisions (and of other similar decisions handed down since May 17, 1954) will grow and multiply.

The Constitution (Article 3, Section 2, Clause 2) gives Congress complete authority to limit, regulate, or even abolish the appellate jurisdiction of the Supreme Court.[14] Congress could, therefore, prohibit the Court from accepting appeals in cases involving matters which, by the clear terms of our Constitution, are beyond federal jurisdiction.[15]

The public should strive to elect a Congress with the courage to take such action. But even if this were done, we would still have the legal chaos which illegal Supreme Court decisions have already caused.

Eisenhower's invasion of Arkansas with military force in 1957, and Kennedy's occupation of the city of Oxford, Mississippi, are fruits of the Supreme Court's decision of May 17, 1954. A frightful number of public school systems in the United States have already eliminated all recognition of God in the classrooms, as a result of the Supreme Court's New York Prayer Case Decision.

The most fundamental of states rights — the right of representative government free of outside interference and domination — has already been abrogated in Tennessee by the 1962 *Baker versus Carr* decision, and is threatened in 26 other states.

Misinterpretation of the Fourteenth Amendment (which is not a valid part of our Constitution) has caused such legal confusion as to render our system of constitutional law almost meaningless — even if the courts were restrained from further misinterpretations.[16] Obviously, we need to eliminate the Fourteenth Amendment and all the fruits of it: get rid of the Amendment and nullify all court decisions, executive actions, administrative regulations, and laws based on it.

How? Technically, Congress, by simple legislative enactment, could proclaim the Amendment invalid and could declare null and void all official acts and decisions based on it. But this would be dangerous procedure. It could set a precedent which Congress might try to use in eliminating a *valid* amendment to the Constitution — thus creating even greater confusion.

Moreover, spurious constitutional doctrine, which the Fourteenth Amendment has already inspired, renders infeasible the remedy of simple legislative enactment. There is no possibility that the present Supreme Court — basing its usurpations of power on the Fourteenth Amendment — would uphold a congressional act abolishing the Amendment.

Congress could enact a Resolution proposing repeal of the Fourteenth Amendment; but this would be tacit recognition that the Amendment is now legal.

The only proper and feasible remedy appears to be a Resolution by Congress *re-submitting* the Fourteenth Amendment to all state legislatures for proper ratification or rejection.

In other words, this vital question should be resolved not by some branch or agency of

government, but by the people themselves, acting through their state legislatures by due constitutional process. If the people want the Fourteenth Amendment and all that it has produced, they could persuade three-fourths of the state legislatures to ratify it legally.

I believe, however, that the people would tell their state legislators to reject it. Large numbers of Americans are coming to realize that, unless the Fourteenth Amendment and all its progeny are abolished, we will not (no matter what else we may do) restore constitutional government in the United States.

FOOTNOTES

(1) Here is the full text of the Fourteenth Amendment:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(2) Here is the current full text of Article V of the Constitution:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that [* * *] no State, without its Consent, shall be deprived of it's Suffrage in the Senate.

(3) *The Encyclopaedia Britannica,* Fourteenth Edition, Vol. 22, pp. 810 ff.

(4) *Andrew Johnson: A Study In Courage,* by Lloyd Paul Stryker, The MacMillan Company, New York, 1929, Chapter XXVI

(5) *The Constitution of the United States of America: Analysis and Interpretation: Annotations of Cases Decided By The Supreme Court Of The United States To June 30, 1952,* Legislative Reference Service of the Library of Congress, Senate Document No. 170, Government Printing Office, 1953, pp. 614-5, 749-59, 966-78

(6) *A Brochure On The 14th Amendment,* written and published by John B. Mason, 357 East Wood, Raymondville, Texas, 1956

(7) *The Fourteenth Amendment To The Constitution Of The United States, A Study,* written and published by Walter E. Long, P. O. Box 1, Austin, Texas, 1960

(8) "The Dubious Origin Of The Fourteenth Amendment," by Walter J. Suthon, Jr., *Tulane Law Review,* Vol. XVIII, New Orleans, Louisiana, December, 1953, pp. 22-44

(9) See Senate Document No. 170, cited in Note 5, especially Pages 565 and 757. For brief history of the "constitutional revolution" which has occurred in this century, see this *Report,* "Supreme Court's Prayer Decision," Parts I, II, III, and IV, especially Part III, dated July 30, 1962.

(10) *Segregation In The Public Schools: Opinion Of The Supreme Court Of The United States,* Senate Document No. 125, Government Printing Office, 1954

(11) Senator James O. Eastland (Democrat, Mississippi), Chairman of Senate Judiciary Committee and Internal Security Subcommittee, speeches in *Congressional Record,* May 26, 1955, and September 26, 1962

(12) Editorial in *The Durham Morning Herald,* February 23, 1961

(13) *Congressional Quarterly Weekly Report,* March 30, 1962, pp. 496-9

(14) For a detailed discussion of the New York Prayer Case decision and of constitutional questions involved, see the four issues of this *Report* mentioned in Footnote 9.

(15) David Lawrence, "How to Reverse Court's Segregation Decision," San Francisco *Call-Bulletin,* September 19, 1957

(16) See also David Lawrence Editorials, *U.S. News & World Report,* "Which 'Constitution'?", September 13, 1957, p. 128; "There Is No 'Fourteenth Amendment'!", September 27, 1957, pp. 139-140; "Illegality Breeds Illegality," October 4, 1957, pp. 143-4; "Illegality Breeds Illegality," October 8, 1962, pp. 123-4; "Lawlessness," October 22, 1962, pp. 107-8